

KAYLE K. HOWE,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 95-64-A
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 21, 1995

Appellant Kayle K. Howe seeks review of a November 18, 1994, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to defer recognition of Clara Nomee as Madam Chairman of the Crow Tribe (Tribe), and to recognize appellant as the Chairman.

The Tribe held a general election on May 14, 1994, for the positions of Chairman, Vice-Chairman, Secretary, and Vice-Secretary, for the July 1994-June 1996 term. The election results were tabulated, and, on May 15, 1994, all 14 judges of the Tribal Election Board signed a statement that, inter alia, Nomee received 1,184 votes, while appellant received 1,012 votes. Over 2,700 tribal members participated in this election.

Section XII of the Election Ordinance establishes procedures for contesting an election. Although no documentary evidence in the administrative record or the filings of the parties substantiates this allegation, appellant states that he filed a timely election protest, pursuant to which the Election Board, seven members in attendance, called a new election for June 25, 1994. About 700 tribal members voted on June 25, 1994, with appellant receiving 600 of those votes.

On June 30, 1994, Nomee and the tribal Secretary filed suit in Tribal Court, seeking a temporary restraining order (TRO) against appellant to prevent a threatened takeover of the Tribal Administration Building on the morning of July 1, 1994, the date set for the inauguration of the new officers. A TRO was granted, and was apparently later extended to include a Tribal Council meeting Nomee called for July 9, 1994.

Both Nomee and appellant called a Tribal Council meeting on July 9, 1994. It appears that 353 tribal members attended appellant's Tribal Council meeting. There is no evidence before the Board as to how many tribal members attended Nomee's meeting. A majority of those tribal members at appellant's meeting reaffirmed his election; a majority of those tribal members at Nomee's meeting reaffirmed her election.

The Tribal Court issued an order on July 15, 1994, stating in part:

Plaintiffs [Nomee and the Tribal Secretary] have filed a Motion to Dismiss [the TRO] attaching the unofficial Minutes from the July 9, 1994 [meeting] where the Crow Tribal Council declared by voice vote that the tribal officers duly elected May 14, 1994 "will be recognized as the Official Tribal officers of the Crow Tribe until the expiration of the term . . ." This tribal judge takes judicial notice of the Tribal Council's voice vote that gives full recognition to the May 14, 1994 election results, and therefore the candidates elected to fill the Crow Tribe's four highest tribal offices are: CLARA NOME, Madame Chairman; MARVIN L. STEWART, Secretary; JOSEPH PICKETT, Vice-Chairman; and DENNIS BIG HAIR, Vice-Secretary.

Since Respondents [appellant, the Chairwoman of the Election Board, and the individuals receiving the most votes for Vice-Chairman and Vice-Secretary on June 25, 1994] have shown contempt for their government's judicial system, by not even appearing to answer before this Court, Plaintiffs have won by default.

From the materials before the Board, it appears that appellant did not protest BIA's recognition of the election results until September 21, 1994, at which time he apparently objected to the Area Director's authorization of Nomee's request to draw against Tribal trust funds for the Tribal budget for August 1994. In an October 3, 1994, letter, the Crow Agency Superintendent informed appellant that the Area Director had made "a trust decision" recognizing Nomee's election. Appellant attempted to appeal this letter to the Board, but later withdrew the appeal. Howe v. Crow Agency Superintendent, 27 IBIA 7 (1994). The Area Director then issued the November 18, 1994, letter presently under appeal.

On appeal, appellant contends that because the Tribal Court has no authority to resolve election disputes, and because his election was affirmed at his Tribal Council meeting as was Nomee's at her Tribal Council meeting, the only "tribal forum" that has authority to resolve this dispute is the Election Board. He argues that the Election Board ruled in his favor, requiring that a new election be held, at which he was elected Chairman.

Although ostensibly arguing for deference to tribal forums, appellant essentially contends that BIA and the Board should recognize the authority of only that tribal forum which held in his favor. The Board declines to accept appellant's invitation to pick and choose among tribal forums. Appellant's dispute is an intratribal matter. He obviously does not want to take his dispute to Tribal Court. However, his reluctance to utilize the available tribal forums does not invest a Federal forum with jurisdiction to resolve an intratribal dispute. Big Horn Business Assoc. v. Acting Billings Area Director, 28 IBIA 113 (1995), and cases cited therein; Johnson v. Acting Minneapolis Area Director, 28 IBIA 104 (1995); Risse v. Acting Aberdeen Area Director, 27 IBIA 304 (1995); Hunt v. Aberdeen Area Director, 27 IBIA

173 (1995). The Board recognizes the primary jurisdiction of tribal forums over tribal election matters, and abstains from exercising authority in such matters in favor of tribal resolution of intratribal disputes.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Billings Area Director's November 18, 1994, decision is dismissed in deference to tribal jurisdiction over an intratribal dispute.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge